

October 16, 2023
Sl. No.7
Court No.19
s.biswas

CO 2345 of 2023

Sri Rabindra Narayan Bose
vs.
Sri Ambujaksha Mahanti and another

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee

... for the petitioner

Mr. Shamit Sanyal
Ms. Priyakshi Banerjee

... for the opposite party no.1

By the order impugned dated May 31, 2023 passed by the learned Civil Judge (Junior Division), 1st Additional Court at Alipore, South 24 Parganas in Title Suit No.112 of 2014, the application filed by the petitioner under Order 11 Rule 14 of the Code of Civil Procedure was disposed of with certain observations.

The court held that if a party does not disclose any document during discovery and inspection the said party will be debarred from producing the same at the trial and if the defendants claim any right, title and interest on the basis of a document, the defendants would have to tender the same and prove the same. If such document is tendered in evidence, the plaintiff would get adequate opportunity to deal with the said document.

Where the learned court went wrong is by treating such document as a deed of gift. The learned court held that the defendants had disclosed that they had acquired the suit property by a registered

deed of gift. Such factum was sought to be introduced in the written statement on the basis of an amendment application. Instead of a deed of conveyance, the defendants wanted to incorporate that the document was a deed of gift. The amendment was allowed. The learned court did not consider the order of a Co-ordinate Bench passed in C.O. 800 of 2018, by which such order was set aside. His Lordship observed that the amendment application had been filed to avoid production of the document and the learned trial court acted without jurisdiction in allowing such amendment. The order allowing amendment was set aside and such order was not challenged by the defendants. The learned court was only directed to rehear the application under Order 11 Rule 14 of the Code of Civil Procedure.

This court agrees with the proposition that in the event the defendants fail to produce the concerned document mentioned in the original written statement, on the basis of which they claim right, title and interest in respect of the property in question, the law will take its own course. In case the defendants tender such document at any stage of the suit, in accordance with the provisions of law, the plaintiff will get a chance to deal with such document.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)